

BOISE, MONDAY, DECEMBER 7, 2015 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IN THE MATTER OF THE)
DISTRIBUTION OF WATER TO WATER)
RIGHT NOS. 36-02551 & 36-07694)
(RANGEN, INC.) IDWR DOCKET CM-DC-)
2011-004.)**

**RANGEN, INC.,)
Petitioner-Respondent,)**

v.)

**THE IDAHO DEPARTMENT OF WATER)
RESOURCES,)**

Respondent-Respondent,)

and)

**IDAHO GROUND WATER)
APPROPRIATORS, INC.)**

Intervenor-Appellant,)

and)

**FREMONT MADISON IRRIGATION)
DISTRICT, A&B IRRIGATION DISTRICT,)
BURLEY IRRIGATION DISTRICT,)
MILNER IRRIGATION DISTRICT,)
NORTH SIDE CANAL COMPANY, TWIN)
FALLS CANAL COMPANY, AMERICAN)
FALLS RESERVOIR DISTRICT #2,)
MINIDOKA IRRIGATION DISTRICT, and)
THE CITY OF POCA TELLO,)**

Intervenors-Respondents.)

Docket No. 42775

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Twin Falls County. Hon. Eric J. Wildman, District Judge.

Racine Olson Nye Budge & Bailey, Chartered, Pocatello, for appellant Idaho Ground Water Appropriators, Inc.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent Idaho Department of Water Resources.

May, May, Sudweeks & Browning, LLP, Boise, Haemmerle & Haemmerle, LLP, Hailey, and Brody Law Office, PLLC, Rupert, for respondent Rangen, Inc.

Rigby, Andrus & Rigby, Rexburg, for respondent Fremont-Madison Irrigation District.

Barker Rosholt & Simpson, LLP, Twin Falls, for respondent A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company.

Fletcher Law Office, Burley, for respondent American Falls Reservoir District #2 and Minidoka Irrigation District.

This is an appeal filed by Idaho Ground Water Appropriators, Inc. (IGWA) from a district court order affirming in part and vacating in part an order issued by the Director of the Idaho Department of Water Resources curtailing junior ground water pumping in the Eastern Snake Plains Aquifer (ESPA). On December 13, 2011, Rangen, Inc. petitioned for a delivery call, alleging that junior ground water pumping in the ESPA was materially injuring its water rights sourced from the Martin-Curren Tunnel. IGWA intervened in the delivery call representing ground water pumpers with rights junior to Rangen's. Other intervenors included the City of Pocatello, the Surface Water Coalition, and the Fremont-Madison Irrigation District. An evidentiary hearing was held by the Director from May 1 to May 16, 2013. As relevant to this appeal, the Director concluded that the Martin-Curren Tunnel was a surface water source, and, therefore, was not subject to the Ground Water Act. Additionally, the Director found that ground water pumping in the ESPA was materially injuring Rangen's water rights and that a curtailment order was appropriate. However, the Director concluded that the benefits of the curtailment diminished significantly if the order extended to pumping east of a volcanic rift zone in the ESPA known as the Great Rift. The Director issued a curtailment order on January 24, 2014, mandating that ground water users located west of the Great Rift, with water rights bearing priority dates junior to Rangen's, refrain from diverting water from the ESPA.

Rangen and IGWA petitioned for judicial review of the Director's decision. The district court upheld the Director's decision in significant part, but vacated the Director's application of a trim line at the Great Rift, concluding that the Director did not have a basis to apply a trim line in this case. Rangen, IGWA, and the City of Pocatello each timely appealed. IGWA appeals the district court's affirmance of the Director's ruling that Rangen's water source should be administered as a surface water source. Additionally, IGWA alleges that the district court should

have vacated the Director's application of the Great Rift trim line on the basis that the curtailment area was overly broad and ordered the Director to set a smaller curtailment area. IGWA also argues that the Director did not provide a reasoned statement to support the curtailment order.

BOISE, MONDAY, DECEMBER 7, 2015 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IN THE MATTER OF THE)
DISTRIBUTION OF WATER TO WATER)
RIGHT NOS. 36-02551 & 36-07694)
(RANGE, INC.) IDWR DOCKET CM-DC-)
2011-004.)**

RANGEN, INC.,)

Petitioner-Respondent,)

v.)

**IDAHO DEPARTMENT OF WATER)
RESOURCES and GARY SPACKMAN, in)
his capacity as Director of the Idaho)
Department of Water Resources,)**

Respondents-Respondents,)

and)

CITY OF POCA TELLO,)

Intervenor-Appellant,)

and)

**IDAHO GROUND WATER)
APPROPRIATORS, INC.; FREMONT)
MADISON IRRIGATION DISTRICT; A &)
B IRRIGATION DISTRICT; BURLEY)
IRRIGATION DISTRICT; MILNER)
IRRIGATION DISTRICT; AMERICAN)
FALLS RESERVOIR DISTRICT #2;)
MINIDOKA IRRIGATION DISTRICT;)
NORTH SIDE CANAL COMPANY; and)
TWIN FALLS CANAL COMPANY,)**

Intervenors-Respondents.)

Docket No. 42836

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Twin Falls County. Hon. Eric J. Wildman, District Judge.

White & Jankowski, LLP, Denver, and A. Dean Tranmer, City of Pocatello, Pocatello, for appellant City of Pocatello.

May, May, Sudweeks & Browning, LLP, Boise, Haemmerle & Haemmerle, LLP, Hailey, and Brody Law Office, PLLC, Rupert, for respondent Rangen, Inc.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent Idaho Department of Water Resources and Gary Spackman.

Rigby, Andrus & Rigby, Rexburg, for intervenors Fremont-Madison Irrigation District.

Barker Rosholt & Simpson, LLP, Twin Falls, for intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company.

Fletcher Law Office, Burley, for intervenors American Falls Reservoir District #2 and Minidoka Irrigation District.

Racine Olson Nye Budge & Bailey, Pocatello, for intervenors Idaho Ground Water Appropriators, Inc.

This is an appeal filed by the City of Pocatello from a district court order affirming in part and vacating in part an order issued by the Director of the Idaho Department of Water Resources curtailing junior ground water pumping in the Eastern Snake Plains Aquifer (ESPA). In December 2011, Rangen, Inc. petitioned for a delivery call, alleging that junior ground water pumping in the ESPA was materially injuring its water rights. After an evidentiary hearing, the Director issued an order curtailing junior priority ground water pumping in the ESPA, but he also imposed a trim line at the Great Rift limiting the curtailment to junior pumpers west of the Great Rift. The Director premised the trim line on both policy and technical grounds.

Rangen and intervenor Idaho Ground Water Appropriators, Inc. (IGWA) each petitioned for judicial review, challenging the trim line. Rangen argued that there should be no trim line at all and that the curtailment order should extend throughout the entire ESPA. IGWA argued that the Director should have placed the trim line at a different location that would result in curtailing fewer acres.

The district court set aside the trim line, concluding that neither the policy nor the technical basis provided an adequate legal foundation for the trim line. Pocatello, which is situated within the ESPA east of the Great Rift, appealed to this Court asking that the district court order setting aside the trim line be reversed.

BOISE, MONDAY, DECEMBER 7, 2015 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IN THE MATTER OF THE)
DISTRIBUTION OF WATER TO WATER)
RIGHT NOS. 36-02551 & 36-07694)
(RANGEN, INC.) IDWR DOCKET CM-DC-)
2011-004.)**

RANGEN, INC.,)

Petitioner-Appellant on Appeal,)

v.)

**THE IDAHO DEPARTMENT OF WATER)
RESOURCES and GARY SPACKMAN, in)
his capacity as Director of the Idaho)
Department of Water Resources,)**

Respondents-Respondents on Appeal,)

Docket No. 42772

and)

**IDAHO GROUND WATER)
APPROPRIATORS, INC. FREMONT)
MADISON IRRIGATION DISTRICT, A&B)
IRRIGATION DISTRICT, BURLEY)
IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, NORTH SIDE)
CANAL COMPANY, TWIN FALLS CANAL)
COMPANY, AMERICAN FALLS)
RESERVOIR DISTRICT #2, MINIDOKA)
IRRIGATION DISTRICT, and THE CITY)
OF POCATELLO,)**

Intervenors-Respondents on Appeal.)

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Twin Falls County. Hon. Eric J. Wildman, District Judge.

Brody Law Office, PLLC, Rupert, Haemmerle & Haemmerle, LLP, Hailey, and
May, May, Sudweeks & Browning, LLP, Boise, for appellant Rangen, Inc.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent Idaho Department of Water Resources and Gary Spackman.

White & Jankowski, LLP, Denver, and A. Dean Tranmer, City of Pocatello, Pocatello, for intervenors City of Pocatello.

Rigby, Andrus & Rigby, Rexburg, for intervenors Fremont-Madison Irrigation District.

Barker Rosholt & Simpson, LLP, Twin Falls, for intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company.

Fletcher Law Office, Burley, for intervenors American Falls Reservoir District #2 and Minidoka Irrigation District.

Racine Olson Nye Budge & Bailey, Pocatello, for intervenors Idaho Ground Water Appropriators, Inc.

This is an appeal filed by Rangen, Inc. from a district court order affirming in part and vacating in part an order issued by the Director of the Idaho Department of Water Resources curtailing junior ground water pumping in the Eastern Snake Plains Aquifer (ESPA). In December 2011, Rangen, Inc. petitioned for a delivery call, alleging that junior ground water pumping in the ESPA was materially injuring its water rights. After an evidentiary hearing, the Director issued an order concluding, among other things, that Rangen's partially decreed water rights use plain and unambiguous language that limits it to diverting water only from the mouth of the Martin-Curren Tunnel and only within the designated ten acre tract. The Director also concluded that junior priority ground water users are using water efficiently and without waste, and he adopted an expert opinion determining the proportion of the water in the Rangen model cell that would accrue to the tunnel rather than to the surrounding springs.

Rangen petitioned the district court for judicial review of each of these determinations. It challenged the legal conclusion that its partial decrees are unambiguous, and it challenged the sufficiency of the evidence supporting the Director's conclusion that junior users are not wasting water and his adoption of the expert opinion. The district court upheld the Director's determinations with respect to each of these issues. Rangen timely appealed and now seeks review by the Supreme Court of the same issues.